

AGENDA

SCHOOL CHARTER COMMISSION

July 22, 2020

**Commissioners Lopez, Baines, Clayton,
D'Allesandro, Freitas, Infantine,
Lachance, Lehoux, Sullivan**

3:00 p.m.

**Aldermanic Chambers
City Hall (3rd Floor)**

1. Chairman Lopez calls the meeting to order.
2. The Clerk calls the roll.
3. Minutes from the regular meeting and public hearing held May 20, 2020.
(Note: Previously distributed to the commission via email for review.)

A motion is in order to accept the minutes of both the regular meeting and the public hearing.
4. Chairman Lopez advises that Dean Eggert, legal counsel for the School District Charter Commission, is present to review the July 17, 2020 letter from the New Hampshire Attorney General's Office.
5. New business to come before the commission.
6. If there is no further business, a motion is in order to adjourn.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 17, 2020

Michael Lopez, Chairman
City of Manchester School District Charter Commission
1 City Hall Plaza
Manchester, NH 03101

Re: Manchester School District Charter Amendment

Dear Chairman Lopez:

On May 27, 2020, the Office of the Attorney General, the Secretary of State's Office, and the Department of Revenue Administration received the Manchester School District Charter Commission's (or the "Commission") proposed charter amendment.

On June 5, 2020, the reviewing agencies sent a letter that jointly acknowledged receipt of the charter amendment proposal.

However, upon further review, we conclude that the process under RSA 49-B:15 has not been followed, and as a result, the reviewing agencies are unable to engage in their review process under Chapter 49-B.

RSA 49-B:15. I states in relevant part –

“The charter commission shall *submit its recommendations for a procedure* to revise, amend, or replace the Manchester school district charter in the form of a ballot question to the Manchester school district voters for a vote at the November 2020 regular election.”

(emphasis added).

RSA 49-B:15, III states that “[t]he charter commission shall have all the powers and duties of a charter commission established pursuant to this chapter and shall comply with the provisions of this chapter, *except as otherwise indicated in this section.*” (emphasis added).

We interpret these provisions to require the Commission to first structure a procedure to revise, amend, or replace the Manchester School District charter, before it can make substantive changes to the school district charter. The Commission's recommendations for this process are subject to the requirements under Chapter 49-B.

In this case, the Commission has submitted to the reviewing agencies substantive amendments in order to establish "more fiscal autonomy and accountability, while abiding by the existing tax cap, and [bringing] the Manchester School District into great conformity with the laws of the State of New Hampshire."

As a basis for the submission for these substantive amendments, the Commission cites the "general authority" under RSA 49-B:15 and RSA 49-B:4-e(IV).

RSA 49-B:4-e(IV) states that "[i]f a commission that has been elected to revise the charter determines that one or more amendments to the charter are required, it may propose such amendments."

However, while this provision does authorize a commission to propose direct amendments to a charter subject to the process outlined under Chapter 49-B, RSA 49-B:15 does not. As outlined above, RSA 49-B:15 requires the Commission to first recommend a process. RSA 49-B:4-e has an effective date of September 30, 2014. RSA 49-B:15 has an effective date of July 10, 2019. "When a conflict exists between two statutes, the later statute will control, especially when the later statute deals with a subject in a specific way and the earlier enactment treats that subject in a general fashion." *Bd. of Selectmen of Town of Merrimack v. Planning Bd. of Town of Merrimack*, 118 N.H. 150, 152 (1978).

Based on the foregoing, we conclude that there is not a reasonable construction that would allow both statutes to be read together in harmony. In addition, RSA 49-B:15, III specifically states that the requirements under Chapter 49-B shall be followed, "except as otherwise indicated in this section."

We further note that this statute requires the Commission's recommended process to be submitted in the form of a ballot question to the Manchester School District voters for a vote at the November 2020 regular election. We interpret this to mean that the Commission's process must be approved first by the voters before any substantive charter amendments can be proposed. This question cannot be added to the November 2020 General Election ballot, and must be submitted to the voters on separate ballot. *See* RSA Chapter 663 (outlining specific questions that are authorized to be submitted on the ballot of a state election).

We conclude that RSA 49-B:15, being the more recent and specific statute controls. Therefore, the Commission's proposed amendments do not constitute the "recommendations for a procedure to revise, amend, or replace the Manchester school district charter" as required by RSA 49-B:15.

As a result, the reviewing agencies are unable to engage in their review process until such time as the Commission submits for the agencies' consideration, its recommendations for a procedure as mandated by RSA 49-B:15.

The reviewing agencies are standing-by to conduct an expedited review of the Commission's recommended procedure to revise, amend, or replace the Manchester School District charter. We believe our review process can be finalized before the November 2020 General Election, provided the Commission submits its recommended procedure in a timely manner.

Please feel free to contact me if you have any questions.

Sincerely,



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cc: David Scanlan, Deputy Secretary of State
Bruce Kneuer, Department of Revenue Administration
Matthew Normand, City of Manchester Clerk